



DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket No. FAR-2021-0051, Sequence No. 4]

**Federal Acquisition Regulation; Federal Acquisition
Circular 2021-07; Introduction**

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of final rules.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rules agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) in this Federal Acquisition Circular (FAC) 2021-07. A companion document, the *Small Entity Compliance Guide* (SECG), follows this FAC.

DATES: For effective dates see the separate documents which follow.

FOR FURTHER INFORMATION CONTACT: The analyst whose name appears in the table below in relation to the FAR case. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202-501-4755 or GSARegSec@gsa.gov.

Rules Listed in FAC 2021-07

<i>Item</i>	<i>Subject</i>	<i>FAR Case</i>	<i>Analyst</i>
I	Section 508-Based Standards in Information and Communication Technology	2017-011	Jackson
II	Revision of Limitations on Subcontracting	2016-011	Uddowla
III	Scope of Review by Procurement Center Representatives	2020-012	Jones
IV	Good Faith in Small Business Subcontracting	2019-004	Bowman
V	Technical Amendments		

ADDRESSES: The FAC, including the SECG, is available via the internet at <https://www.regulations.gov>.

SUPPLEMENTARY INFORMATION: Summaries for each FAR rule follow. For the actual revisions and/or amendments made by these FAR rules, refer to the specific item numbers and subjects set forth in the documents following these item summaries. FAC 2021-07 amends the FAR as follows:

Item I—Section 508-Based Standards in Information and Communication Technology (FAR Case 2017-011)

This final rule amends the FAR to implement the Access Board's final rule published January 17, 2017. Section 508 of the Rehabilitation Act of 1973 requires the FAR to incorporate revised accessibility standards developed by the Access Board for information and communication technology (ICT). The Access Board is also known as the Architectural and Transportation Barriers Compliance Board. This rule ensures that Federal employees with disabilities

have comparable access to, and use of, such information and data relative to other Federal employees. Section 508 also requires Federal agencies to ensure that members of the public with disabilities have comparable access to publicly available information and data.

Item II—Revision of Limitations on Subcontracting (FAR Case 2016-011)

This rule amends the FAR to implement regulatory changes made by the Small Business Administration (SBA) in its final rule published in the *Federal Register* at 81 FR 34243, on May 31, 2016. SBA's final rule implements the statutory requirements of section 1651 of the National Defense Authorization Act for Fiscal Year 2013. Section 1651 revised and standardized the limitations on subcontracting, including the nonmanufacturer rule, that apply to small business concerns under FAR part 19 procurements. Section 1651 shifts the limitations on subcontracting from the concept of a required percentage of work to be performed by a prime contractor to the concept of a limit on the percentage of the overall award amount to be spent by the prime on subcontractors. Significantly, section 1651 excludes from this calculation the percentage of the award amount that the prime contractor spends on subcontractors who are similarly situated entities. This rule implements the revised and standardized limitations on subcontracting through the use of a single FAR clause for

every small business program, instead of continuing to implement through multiple FAR clauses that were specific to a particular small business program. This rule also revises the FAR clause implementing the nonmanufacturer rule to reflect the standardized requirements across all the small business programs.

This rule may have a positive economic impact on small businesses. Through the ability to meet the limitations by means of subcontracts with similarly situated entities, this rule will make it possible for small businesses to compete for larger contracts than they could in the past.

Item III—Scope of Review by Procurement Center

Representatives (FAR Case 2020-012)

This final rule amends the FAR to implement section 1811 of the National Defense Authorization Act for Fiscal Year 2017 (Pub. L. 114-328), as implemented in the Small Business Administration (SBA) final rule published at 84 FR 65647 on November 29, 2019. Section 1811 allows SBA's procurement center representatives to review any solicitation for a contract or task order, without regard to whether it is set aside for small business concerns, or reserved in the case of a multiple-award contract, or whether it would result in a bundled or consolidated contract or order.

Item IV—Good Faith in Small Business Subcontracting (FAR Case 2019-004)

This final rule amends the FAR to implement section 1821(c) of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2017 (15 U.S.C 637 note, Pub. L. 114-328), as implemented in the Small Business Administration (SBA) final rule published at 84 FR 65647, dated November 29, 2019.

Specifically, the final FAR rule at FAR 19.705-7 includes examples of a good faith effort to comply with the subcontracting plan, and examples of a failure to make a good faith effort. Failure to make a good faith effort to comply with the plan may result in assessment of liquidated damages.

Additionally, the final rule amends the FAR to require that prime contractors with a commercial subcontracting plan include indirect costs in their subcontracting goals. Previously, prime contractors were required to include indirect costs in the summary subcontract report (SSR) but not in their subcontracting goals, which led to inconsistencies when comparing the SSR to the goals in the commercial subcontracting plan. Including indirect costs in both the SSR and subcontracting goals established in the commercial subcontracting plan will allow for consistency.

Item V-Technical Amendments

Editorial changes are made at FAR 42.709-1 through 42.709-7, 52.242-3, and 52.245-1.

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Federal Acquisition Circular (FAC) 2021-07 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator of National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2021-07 is effective **[insert date of publication in the *Federal Register*]** except for Items I through V, which are effective **[insert date 30 days after date of publication in the *Federal Register*]**.

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